U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-O-A-

DATE: OCT. 12, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FROM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an associate professor of Biology, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. He subsequently granted a motion to reconsider and issued a new decision concluding that the Petitioner had not demonstrated that his proposed employment was national in scope or that "a waiver of the job offer and labor certification requirement will be in the national interest of the United States." The Petitioner filed an appeal which we rejected. We reopened the matter on our own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and provided him an opportunity to submit a brief within 30 days. As the Petitioner did not respond, we will base our decision on the existing record.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of Job Offer –
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> > (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The record establishes that the Petitioner is a member of the professions holding an advanced degree, that his work as a professor is in an area of substantial intrinsic merit, and that the proposed benefits of his research will be national in scope.[2] It remains, then, to determine whether he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was employed as an associate professor of biology at [redacted] The record includes evidence of his academic credentials and professional memberships, along with notes and evaluations from students. The Director thoroughly and specifically discussed the submitted evidence, explained why the materials did not warrant approval of the petition and, in a request for evidence, provided examples of the kind of materials that could establish eligibility. On appeal, the Petitioner contends that his "application was greatly mishandled by the reviewer," but does not specifically address how the Director erred in his findings. Regardless, for the reasons discussed below, the record does not establish that his work has influenced the field as a whole as required under the third prong of the *NYSDOT* analytical framework. Without such a showing, employment in a beneficial occupation does not, by itself, qualify the Petitioner for the national interest waiver.

We note that on motion, as in the initial filing, the Petitioner relied on his advanced degree, salary, professional memberships, and "other comparable evidence" to establish eligibility for a national interest waiver. Educational degrees, high salary, and professional memberships are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (D), and (F), respectively. As the Petitioner qualifies for the classification sought as a member of the professions with an advanced degree, the issue of exceptional ability is moot. However, pursuant to section 203(b)(2)(A) of the Act, foreign nationals of exceptional ability are also generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Whether a given individual seeks classification as a foreign national of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver based on a degree of expertise significantly above that ordinarily encountered in his field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. In other words, even if the Petitioner had established that he qualifies as an individual of exceptional ability, he must still show that he meets all three prongs of the *NYSDOT* analytical framework.

[2] Regarding the second prong of the *NYSDOT* analytical framework, the Director correctly found that the proposed benefits of teaching alone would not be national in scope. The Petitioner, however, submitted sufficient documentation to demonstrate that the proposed benefits of his research are national in scope. Therefore, the Director's finding on this issue is withdrawn.

The Petitioner is a member of both the [redacted] and the [redacted] and presented three abstracts at [redacted] meetings while a student. There is also evidence of one undated, unpublished manuscript draft and a published journal article which, as indicated by the Director, was not submitted for publication until after the initial submission of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). Regardless, the above materials do not demonstrate that the Petitioner has influenced his field. For example, while publications and presentations may demonstrate that his research findings were shared with others and may be acknowledged as original based on their selection to be presented or published, they do not establish that those findings have had an impact on the field as a whole.

The record also contains one reference letter from [redacted] a microbiology professor at [redacted] who indicated that the Petitioner "is a very resourceful individual" who, if "given the right tools, [] is geared towards achieving greater heights in this profession." The author also states that "[h]e is making enormous contributions to the scientific community here in the United States and in the world at large," but does not provide any additional information regarding the Petitioner's contributions. Statements made without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Under the third prong of the *NYSDOT* analytical framework, a petitioner must demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker with the same minimum qualifications. In order to make such a showing, a petitioner must have a past record that "justifies projections of future benefit to the national interest" by exhibiting "some degree of influence on the field as a whole." *Id.* at 219, n. 6. The submitted materials do not set the Petitioner apart from other competent and qualified professors, nor do they establish that his work has resulted in significant benefits beyond his own students and his own classroom. Without evidence demonstrating that his work has affected the field as a whole, employment in a beneficial occupation such as a professor does not qualify the Petitioner for the national interest waiver.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient to confirm that the Petitioner's past record of achievement is at a level sufficient to waive the job offer requirement which, by law, attaches to the visa classification sought. Considering the record, he has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States. Accordingly, the

Petitioner has not met his burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of U-O-A-*, ID# 113065 (AAO Oct. 12, 2016)